

DOCUMENT RESUME

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Disposal of Veterans' Administration Revolving Fund Property.
B-163084. June 27, 1977. 4 pp.

Decision re: Administrator, Veterans Administration; by Robert
F. Keller, Deputy Comptroller General.

Issue Area: Facilities and Material Management (700).

Contact: Office of the General Counsel: General Government
Matters.

Budget Function: General Government: Other General Government
(806).

Organization Concerned: General Services Administration.

Authority: Federal Property and Administrative Services Act of
1949, as amended; Brooks Bill (P.L. 92-522, sec. 902; 86
Stat. 1279; 40 U.S.C. 483 et seq.). Second Independent
Offices Appropriation Act, 1954 (67 Stat. 193). Veterans'
Benefits Act of 1957, sec. 1711 (71 Stat. 142; 38 U.S.C.
5011). (P.L. 87-314; 75 Stat. 675). H. Rept. 87-878. 41
C.F.R. 101-43.001-5. 41 C.F.R. 101-43.001-20. 41 C.F.R.
101-43.315-3. 41 C.F.R. 101-45.307. 40 Comp. Gen. 356.
B-116731 (1953).

The Director of the Supply Service of the Department of
Medicine and Surgery of the Veterans' Administration (VA)
requested a decision concerning the VA's authority to sell
silver recovered from the VA's supplies, for which it currently
has no need, to the highest bidder, regardless of a declared
need by another Government agency. Sales of excess or surplus
property must be handled by the General Services Administration,
and the need for personal property by any Federal agency must be
paramount to any other disposal of such property. However, the
VA's revolving fund should be reimbursed for transfers or sales
of its property if reimbursement is requested. (Author/SC)

Susan Serling
CGM

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-163084

DATE: June 27, 1977

MATTER OF: Disposal of Veterans Administration revolving fund property.

DIGEST: Veterans Administration's authority under 38 U.S.C. § 5011, by which its revolving supply fund receives proceeds from sale of scrap, excess or surplus property, does not enable VA to conduct its own sales of excess or surplus property. Such transactions must be handled by General Services Administration in accordance with Federal Property Act and implementing regulations which make need for personal property by any Federal agency paramount to any other disposal. However, VA revolving fund should be reimbursed for transfers or sales of its property if reimbursement is requested under 40 U.S.C. § 485(c).

This decision to the Administrator of the Veterans Administration (VA) is in response to a request from the Director, Supply Service, Department of Medicine and Surgery, VA, concerning VA's authority to sell silver recovered from VA supplies for which it currently has no need. Specifically, we have been asked whether VA has authority under 38 U.S.C. § 5011 to sell such silver to the highest bidder, regardless of a declared need by another Government agency and, if so, whether it may sell the silver directly without going through the General Services Administration (GSA).

These questions arise out of a refusal by GSA to grant VA's request to sell 396,463 fine troy ounces of silver bullion on deposit at the U.S. Assay Office, New York, N.Y. GSA's position as expressed in its letter of March 7, 1977, to VA is as follows:

"* * * As far as we can determine, the only authority applicable to the disposition of your agency's silver by GSA is the Federal Property and Administrative Services Act of 1949, as amended (the Act).

"Section 202 of the Act [40 U.S.C. § 483] and the regulations issued thereunder require that excess property be made available for transfer to other Federal agencies prior to determining the property surplus. Section 203 of the Act [40 U.S.C. § 484] provides for sale of surplus property.

"In the past, there were no known Federal requirements for the silver recovered in your program, so the property was determined to be surplus and sold. However, the Department of Defense has recently registered a need for silver, and, therefore, we are unable to determine your agency's silver to be surplus to Federal needs until it has first been made available for transfer to other Federal agencies pursuant to Section 202. Should the silver be transferred to another Federal agency, we know of no authority that would require the transferee agency to render reimbursement in excess of your recovery expenses."

VA questions GSA's categorization of the silver as "excess." It contends that the silver is not excess but is a commodity for which it has a continuing need and, therefore, its needs are just as legitimate and demanding as the needs of the Department of Defense or any other Government agency. The implicit extension of this argument is that GSA should sell the silver for VA to the highest bidder regardless of the needs of another Government agency, and deposit the receipts of such sales to VA's revolving supply fund pursuant to 38 U.S.C. § 5011.

The Federal Property Management Regulations provide that whether personal property under the control of a Federal agency is "excess" to its needs is determined by the head of that agency. 41 C.F.R. § 101-43.001-5 (1976). GSA's assumption that the necessary determination was made that the silver is "excess" appears proper in view of VA's request that GSA sell the silver since we can find no rationale for VA's wish to sell a commodity it needs. We note that in a letter from the VA Administrator, transmitting the bill that became 38 U.S.C. § 5011, the VA itself characterized the silver recovered from exposed x-ray film as "not directly related to the mission of the Veterans' Administration." H. Rept. No. 878, 87th Cong., 1st Sess. (1961).

Once the determination that personal property is "excess" to the needs of an agency has been made and reported to GSA, the Administrator of GSA must determine whether the property is excess to the needs of all Federal agencies, *i. e.*, "surplus." 41 C.F.R. § 101-43.001-20 (1976).

VA also contends that 38 U.S.C. § 5011 allows it to sell silver and deposit the receipts to the revolving supply fund without regard to the Federal Property and Administrative Services Act, *infra*, and GSA's property disposal requirements. In support of this position, it refers to the legislative history of Pub. L. No. 87-314 (September 26, 1961), 75 Stat. 675, which amended 38 U.S.C. § 5011.

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The revolving supply fund was established by the Second Independent Offices Appropriation Act, 1954, 67 Stat 193, and reenacted as section 1711 of the Veterans' Benefits Act of 1957, 71 Stat. 142, 38 U.S.C. § 5011. Section 5011 of title 38, U.S. Code, as amended, provides in pertinent part:

"(a) The revolving supply fund established for the operation and maintenance of a supply system for the Veterans Administration (including procurement of supplies, equipment and personal services and the repair and reclamation of used, spent, or excess personal property) shall be--

* * * * *

"(3) Credited with advances from appropriations for activities to which services or supplies are to be furnished, and all other receipts resulting from the operation of the fund, including property returned to the supply system when no longer required by activities to which it had been furnished [and] the proceeds of disposal of scrap, excess or surplus personal property * * *" (Emphasis added.)

The language underscored above was added to section 5011 by Pub. L. No. 87-314, supra, to clarify VA's authority to use its revolving supply fund for the repair and reclamation of personal property. The legislative history indicates that the legislation was designed to overcome our decision at 40 Comp. Gen. 356 (1960), in which we held that the law establishing the supply fund limited its use to financing supply and service activities directly related to the VA's mission, and that such activities did not include a proposed centralized program for the recovery of silver in salable form from x-ray developing solutions.

The amendment to section 5011 clearly permits VA to implement its silver recovery program through the revolving supply fund and to credit the fund with the proceeds from disposal of recovered silver. However, we find no indication in the legislative history of either the Second Independent Offices Appropriation Act, 1954, supra, or Pub. L. No. 87-314, supra, that the Congress intended to remove VA's property from GSA's overall control of property disposal, including disposal of recovered materials.

The Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 471 et. seq., vests in the Administrator of GSA broad authority over the disposition of excess and surplus Government property. VA has no specific authority to sell property itself except by delegation from GSA. In the absence of such authority, the transfer or sale of the silver in question must be handled

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by GSA in accordance with the Property Act and the regulations issued thereunder.

The Property Act and implementing regulations generally do not require reimbursement for excess property transfers; nor do they ordinarily permit an agency to retain the proceeds from surplus property sales. See 40 U.S.C. §§ 483(a), 485(a); 41 C.F.R. §§ 101-43.315-3, 101-45.307 (1976). However, an exception is provided by 40 U.S.C. § 485(c) as follows:

"Where the property transferred or disposed of was acquired by the use of funds either not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax or other revenue or receipts, then the net proceeds of the disposition or transfer shall be credited to the reimbursable fund or appropriation or paid to the Federal agency which determined such property to be excess * * *."

This exception requires "fair value" reimbursement, as determined by GSA, when requested in the case of excess property transfers, 40 U.S.C. § 483(a), and also permits retention of the proceeds from sales of surplus property, 40 U.S.C. § 485(a).

In our view, property acquired by the VA revolving fund established by 38 U.S.C. § 5011 falls within the reimbursement exception in 40 U.S.C. § 485(c), quoted above. See in this regard, B-116731, November 4, 1953, where we held that these reimbursement provisions applied to property acquired under a similar revolving fund. Moreover, 38 U.S.C. § 5011 clearly contemplates that the VA revolving fund will be credited with the proceeds of excess or surplus property transactions. We note that the GSA regulations state that the current policy of the executive branch is not to provide reimbursement for transfers of working capital fund property. However, as indicated above, we believe that an exception to this policy is required in the case of transfers of property acquired by the VA revolving fund.

In sum, it is our opinion that, while the disposition of VA revolving fund property is subject to GSA control under the Property Act, reimbursement to the fund is required in the case of transfer or sale of such property if requested pursuant to 40 U.S.C. § 485(c).

R. J. K. [Signature]
Deputy Comptroller General
of the United States